

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK LEE SMITH,

Petitioner,

v.

CASE NO. 2:13-CV-13863
HONORABLE AVERN COHN

MARY BERGHUIS,

Respondent.

**ORDER DISMISSING PETITION AS DUPLICATIVE
AND DENYING A CERTIFICATE OF APPEALABILITY,
AND DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

I.

This is a habeas case under 28 U.S.C. § 2254. Michigan prisoner Derrick Lee Smith (“Petitioner”) challenges his two convictions for kidnapping which were imposed following his no contest plea in the Wayne County Circuit Court in 2008. Petitioner was sentenced to concurrent terms of 22 ½ to 75 years imprisonment on those convictions.¹ Petitioner raises claims concerning the state trial court’s jurisdiction, fraud, and the validity of the state trial court’s judgment. As will be explained, Petitioner already has a habeas petition pending in this district challenging his convictions. Accordingly, this petition will be dismissed.

II.

In 2010, Petitioner filed a habeas action challenging his kidnapping convictions with this court – and that action is currently pending before another judge in this district.

¹Petitioner also pleaded no contest to six counts of first-degree criminal sexual conduct arising from the same incident and received the same concurrent sentences on those convictions.

See Smith v. Ludwick, Case No. 5:10-CV-11052 (E.D. Mich. O'Meara, J.). The instant action is duplicative of Petitioner's pending habeas petition because he challenges his kidnapping convictions in both petitions and appears to raise similar and related claims. Thus, the case must be dismissed as duplicative. See, e.g., Harrington v. Stegall, 2002 WL 373113, *2 (E.D. Mich. Feb. 28, 2002); see also Davis v. United States Parole Comm'n, 870 F.2d 657, 1989 WL 25837, *1 (6th Cir. March 7, 1989) (district court may dismiss a habeas petition as duplicative of a pending habeas petition).

III.

Accordingly, the petition is DISMISSED. The dismissal is without prejudice as to the petition filed in Case No. 5:10-CV-11052. This case is CLOSED.

Before Petitioner may appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). When a district court denies relief on procedural grounds without addressing the merits, a certificate of appealability should issue if reasonable jurists would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and reasonable jurists would find it debatable whether the court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). Reasonable jurists could not debate the correctness of the Court's procedural ruling. Accordingly, a certificate of appealability is DENIED.

The Court also DENIES leave to proceed in forma pauperis on appeal as an appeal cannot be take in good faith. See Fed. R. App. P. 24(a).

SO ORDERED.

S/Avern Cohn
UNITED STATES DISTRICT JUDGE

Dated: September 18, 2013

Detroit, MI

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I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, September 18, 2013, by electronic and/or ordinary mail.

S/Sakne Chami
Case Manager, (313) 234-5160